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EXAMINER	
AUGUSTIN, EVENS J	

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DHIREN K. MARJADI,
JAMES R. SCAPA,
JAMES E. BRANCHEAU,
and
JAMES P. DAGG

Appeal 2009-007275
Application 09/855,317
Technology Center 3600

Decided: September 18, 2009

Before: MURRIEL E. CRAWFORD, JOSEPH A. FISCHETTI, and BIBHU R. MOHANTY, *Administrative Patent Judges*.

CRAWFORD, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

This is an appeal from the final rejection of claims 1 to 12.

The claimed invention is directed to a digital content licensing method including the step of selecting one of a customer computer network and the application service provider for execution of a selected digital content (Spec. para. [0012-0013]).

Claim 1, reproduced below, is further illustrative of the claimed subject matter.

> 1. For use in a customer computer network having at least one node capable of executing digital content from a digital content source on the customer computer network or executing digital content from a digital content source on an application service provider, a licensing method comprising the steps of:
>
> a. providing licensed units to a customer;
>
> b. providing independently selectable digital content;
>
> c. assigning a predetermined number of customer computer network assigned units to each independently selected digital content when the digital content is run on the customer computer network;
>
> d. assigning a predetermined number of application service provider assigned units to each independently selected digital content when the digital content is run on the application service provider;
>
> e. charging a number of checked out units to the customer computer network based on the digital content currently being run by the customer on the customer computer network and on the application service provider;
>
> f. selecting through the customer computer network one of the customer computer

> network and the application service provider for execution of a selected digital content;
>
> g. determining a number of available units equal to the difference between the total licensed units to the customer computer network and the total checked out units charged to the customer computer network for digital content currently being executed on the customer computer network and on the application service provider for the customer; and
>
> h. determining whether a requested digital content is to be executed or denied execution on the selected one of the customer computer network and the application service provider based on the difference between the available units on the customer computer network requesting execution of the digital content and the assigned units of the selected digital content on the selected customer computer network and the application service provider.

The references of record relied upon by the Examiner as evidence of obviousness are:

Christiano	US 5,671,412	Sep. 23, 1997
Wyman	US 5,745,879	Apr. 28, 1998

The Examiner rejected claims 1 to 12 under 35 U.S.C. § 103(a) as unpatentable over Christiano in view of Wyman.

OPINION

We have carefully reviewed the rejections on appeal in light of the arguments of the Appellants and the Examiner. As a result of this review, we have reached the conclusion that the applied prior art does not establish

the prima facie obviousness of the claimed subject matter. Therefore the rejections on appeal are reversed. Our reasons follow.

The following comprise our finding of facts with respect to the scope and content of the prior art and the differences between the prior art and the claimed subject matter. Christiano discloses a licensing method which includes a finder for locating a license server on the network implementing a license management system (col. 4, ll. 58 to 61). The Examiner relies on Christiano's disclosure of a finder for teaching the step of selecting one of the customer computer network and application service provider step (Ans. 9). The Christiano finder allows a systematic search for a server to implement with the most recent known location of the server regardless of the type or location of the client (col. 23, ll. 31 to 35). The Examiner also relies on Wyman for teaching the step of selecting one of the customer computer network and the application service provider for execution of the digital content and directs our attention to column 8, lines 35 to 45. Wyman discloses a method and system of managing and executing licensed programs (col. 6, ll. 13 to 18). The Wyman system includes a license server 10 which communicates with a number of delegates 13 which are in communication with users 16 (col. 8, ll. 22 to 37; Fig. 1). The users are CPU nodes where the licensed programs content 17 are actually executed (col. 8, ll. 38 to 39, 45 to 46; col., 9, ll. 43 to 44).

The disagreement between the Appellants and the Examiner is with respect to whether the prior art discloses the step of selecting through the customer network one of the customer computer network and the application service provider for execution of a selected digital content. The disclosure in Christiano of a finder which finds a license server is not a selection

between an application service provider and customer computer network for execution of digital content. All the finder does is locate a server. There is no selection between a server and a customer's computer network for execution of digital content. Wyman also does not disclose a step of selecting between a customer computer network and an application service provider but rather that content 17 is executed on the customer computer network only. We are thus in agreement with Appellants that the prior art does not disclose the step of selecting one of the customer computer network and the application service provider for execution of digital content.

The Examiner's decision is reversed.

REVERSED

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